

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JIMMY KINSLOW,

Plaintiff,

v.

Civ. No. 07-1164 MV/RLP

NEW MEXICO CORRECTIONS
DEPARTMENT, *et al.*,

Defendants.

MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT AND RECOMMENDATION¹

1. On August 12, 2008 the Court entered its Magistrate Judge's Report and Recommendation [Doc. 30], recommending to the district court that Plaintiff's Motion for Preliminary Injunction [Doc. 5] and Motion for Emergency Protective Order [Doc. 23] be denied as moot, given that Plaintiff had been transferred to another facility.

2. Plaintiff timely filed objections [Doc.30], followed by a Motion to Clarify the Report and Recommendation [Doc. 37]. In sum, Plaintiff argues that his Motion for Preliminary Injunction, in addition to being against Las Cruces defendants (the facility where he was previously housed) was also against Joe Williams, the Secretary of Corrections and the New Mexico Corrections Department. Plaintiff's arguments are well-taken. The Court therefore grants the Motion to Clarify by issuing this Supplemental Report and Recommendation.

¹ Within ten (10) days after a party is served with a copy of the Magistrate Judge's Supplemental Report and Recommendation that party may, pursuant to 28 U.S.C. §§ 636 (b)(1) , file written objections in the United States District Court to the Report and Recommendation. A party must file any objections within the ten-day period allowed if that party wants to have appellate review of the Report and Recommendation. If no objections are filed, no appellate review will be allowed.

3. On August 26, 2008 the Court held an evidentiary hearing on pending motions in this case. At the hearing, Plaintiff stated he wished to withdraw his Motion for Emergency Protective Order [Doc. 23], and that Motion is taken care of by another Order.

4. As for the Motion for Preliminary Injunction that was the subject of the Court's Report and Recommendation, Plaintiff subsequently filed a second Motion for TRO and Preliminary Injunction [Doc. 38] against Joe Williams and the New Mexico Corrections Department, alleging violations of various constitutional and statutory rights. Essentially, he makes the same claims in his second Motion that he did in his first Motion. See Doc. 5 & Doc. 38.

5. Because of the second filing the Court finds that the first Motion is superceded by the second Motion, somewhat analogously to an amended complaint which supercedes the first complaint. See Fed.R.Civ.P. 15. The Court cannot give the same relief more than once. The Court has given Defendants until September 13, 2008 to respond to the Motion for TRO and Preliminary Injunction [Doc. 38] and a report and recommendation will issue at that time.

RECOMMENDED DISPOSITION

I recommend that the Motion to Clarify the Report and Recommendation [Doc. 37] be granted and I further recommend that the Motion for Preliminary Injunction [Doc. 5] be denied for the reasons stated herein.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', written over a horizontal line.

Richard L. Puglisi
United States Magistrate Judge